



Spec Formliners, Inc.

Terms and Conditions of Sale

1. **GENERAL.** These Terms and Conditions constitute an integral part of any offer made by Seller to sell goods to Buyer and shall govern the sale of the goods. Any additional or different terms or conditions proposed by Buyer in any purchase order or otherwise are hereby rejected. Buyer's acceptance of all of the Terms and Conditions herein is an express condition to the formation of any contract of sale between Buyer and Seller.
2. **PRICES AND TAXES.** Prices are exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes or duties now in force or enacted in the future. Any such tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. Significant and unforeseen price increases in raw materials used during manufacturing of Seller's products may result in a surcharge to Buyer in addition to the contract price.
3. **PAYMENT.** Seller requires a 25% down payment at receipt of the executed Purchase Order. Terms of payment are net fifteen (15) days after the date of Seller's invoice. Amounts not paid when due shall bear interest at the lesser of one and one-half percent (1.5%) per month or the highest legal rate and may result in the imposition by Seller of modified credit terms.
4. **SHIPMENT.** All shipments herein shall be F.O.B. Seller's facility via a commercial service of Seller's choice, unless otherwise requested by Buyer. Shipments are made in a commercially reasonable manner as determined by Seller. The time of delivery is the time the goods to be delivered is picked up by the carrier. All shipping charges shall be the obligation of Buyer and paid freight collect upon receipt by Buyer or, if paid by Seller, then set forth as a separate item on Seller's invoice.
5. **TITLE AND RISK OF LOSS.** Title to the goods shall pass to Buyer upon delivery thereof by Seller to carrier (F.O.B. Origin). Upon delivery, Buyer shall be responsible for and bear all risk of loss or damage to the product.
6. **PURCHASE PRICE SECURITY INTEREST.** It is agreed by Buyer and Seller that, as to the goods which are the subject of any contract of sale and all accessions thereto and proceeds thereof, a purchase money security interest shall attach with Seller as secured party, and with respect to goods which are resold in any form by Buyer, Seller shall be the assignee of any security interest which Buyer retains or obtains in such goods until Buyer has made payment in full therefor in accordance with the terms hereof. Buyer shall be in default (i) if it fails to make any payment as provided for herein; (ii) if bankruptcy, receivership or insolvency proceedings are instituted by or against Buyer; (iii) if Buyer makes any assignment for the benefit of creditors. Upon Buyer's default, Seller shall have all the rights and remedies of a secured creditor as well as those of a seller of goods, under the Uniform Commercial Code and any other applicable law, including, but not limited to, the right to take possession of the goods. Seller may remedy any default and may waive any default without waiving the default remedied or without waiving any prior or subsequent default.
7. **DESIGNS AND TRADE SECRETS.** Any drawings, data, designs, software programs or other technical information supplied by Seller to Buyer in connection with the sale of goods shall remain Seller's property and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Seller's prior written consent in each particular instance.
8. **WARRANTY.** The warranties set forth in this paragraph are given in lieu of and expressly disclaim any and all other warranties, express, implied or statutory, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose, except as expressly set forth immediately below. Seller warrants that the goods sold will be free from defects in material and workmanship, and that such goods will conform to Seller's published specifications. Goods which have been subject to abuse, misuse, accident, alteration, neglect, unauthorized repair or installation are not covered by the warranty. Seller shall make the final determination as to the existence and cause of any alleged defect. No warranty is made with respect to custom goods or goods produced to Buyer's specifications except as may be specifically stated in writing by Seller in the agreement for such custom goods.
9. **LIMITATION OF LIABILITY.** The liability of Seller hereunder shall be limited to replacing, repairing, or refunding, at its option, any defective goods which are returned F.O.B., Seller's facility. In no event shall Seller be liable for any loss of use, revenue, profit, or for any direct, indirect, incidental, special or consequential damages arising out of, connected with, or resulting from the sale and use of goods. This exclusion also includes any liability that may arise out of third-party claims against Buyer. Seller is relieved of any blame for the failure of the buyer to follow industry best practices or failure to adhere to Seller's application recommendations. Seller is relieved of any blame for failure of buyer to produce the finished product under identical conditions to those of any approved mockup. Seller shall also not be liable for any loss, damages, or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of Seller, including, but not limited to, modified or accelerated lead times, supplier delay or material shortages, force majeure, act of God, labor unrest, fire, explosion, or earthquake.
10. **CANCELLATION AFTER ACCEPTANCE.** Buyer may cancel a purchase order only upon the payment of a cancellation charge equal to the greater of twenty-five (25%) of the original purchase order value, or expenses already incurred by Seller including, but not limited to, labor and material costs, overhead, commitments made by Seller, and a reasonable profit. Upon cancellation, Buyer shall have no rights to partially completed products.
11. **ASSIGNMENT.** Buyer shall not assign this agreement, any contract of sale, any purchase order, any interest therein or any rights thereunder without the prior written consent of Seller.
12. **MODIFICATION.** This agreement may not be changed, modified or amended, except in writing signed by authorized representatives of the parties.
13. **GOVERNING LAW, JURISDICTION AND VENUE.** The agreement between the parties is made, governed by, and shall be construed in accordance with the laws of the State of California. The California state courts of Orange County, California (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of California) shall have exclusive jurisdiction and venue over any dispute arising out of this agreement and sale, and Buyer hereby consents to the jurisdiction of such courts.
14. **ATTORNEY'S FEES AND COSTS.** Reasonable attorney's fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement.
15. **NONWAIVER.** The waiver by either party of any rights under this sale in any one or more instances shall not constitute a waiver of either party of any other rights hereunder or of such rights on a future occasion.
16. **ACCEPTANCE.** Acceptance of Buyer's purchase order is conditional on assent to change. Seller accepts on the condition that Buyer agrees to Seller's terms, which shall prevail in the event that Buyer's and Seller's terms are not identical.

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